

REMARKS

Claims 1-12, 18-28, 34-43, 49-52, 57-60, 65-68 and 73-75 are pending in the present application. Applicants have amended claims 1, 2, 4-12, 18, 19, 21-28, 34-43, 49-52, 57-60, 65-68 and 73. Supports for the amendments to claims 1, 2, 4-12, 18, 19, 21-28, 34-43, 49-52, 57-60, 65-68 and 73 can be found, *inter alia*, in line 26 on page 9 of the original specification and do not raise any new issue. Moreover, the amendments would either place the present application in condition for allowance or place it in a better condition for appeal. Therefore, entry of the present Amendment is respectfully requested. Upon entry of the present Amendment, claims 1-12, 18-28, 34-43, 49-52, 57-60, 65-68 and 73-75 will be under examination.

REJECTION OF CLAIMS UNDER 35 U.S.C. 103

Claims 1-75 stand rejected under 35 U.S.C. 103(a) as allegedly being obvious over Myers et al., U.S. Patent No. 5,891,845 (“Myers”), in view of the combination of Benet et al., U.S. Patent No. 6,004,927 (“Benet”) and Curatolo et al., U.S. Patent No. 5,605,889 (“Curatolo”).

In response, without conceding to the correctness of the Office Action’s position, applicants have amended claims 1, 2, 4-12, 18, 19, 21-28, 34-43, 49-52, 57-60, 65-68 and 73 to emphasize that the method and composition comprises azithromycin and pluronic L61. Applicants also would like to point out that superior results have been achieved by using the claimed combination. As shown in the enclosed declaration from Dr. Steve Sutton, the presence of pluronic L61 increased the beagle dog’s exposure to azithromycin by 121-240% as measured by jugular AUC₀₋₂₄.

Therefore, the pending claims on azithromycin-pluronic L61 combination are nonobvious over the disclosure of Myers-Benet-Curotolo combination as “superiority of a property shared with the prior art is evidence of nonobviousness,” M.P.E.P. § 716.02 (a). Accordingly, reconsideration and withdrawal of this ground of rejection are respectfully requested.

CONCLUSION

In view of the claim amendments and the remarks, early and favorable consideration of all pending claims is respectfully requested.

It is believed that no fee is deemed necessary in connection with the filing of the present Amendment. However, if any fees are required, the Commissioner is hereby authorized to charge any such fees to our Deposit Account No. 16-1445.

Respectfully submitted,

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